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March 5, 2007

### Via ECFS

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: RM-11354**

*In the Matter of APCC's Motion to Dismiss Locus Telecommunications, Inc.'s Petition for Declaratory Ruling*

Dear Secretary:

In a Public Notice released February 1, 2007, the Commission established a pleading cycle on Locus Telecommunications, Inc.'s ("Locus") Petition for Declaratory Ruling or Rulemaking Regarding Customer Service Calls from Payphones and APCC Services, Inc.'s ("APCC") Motion to Dismiss Locus' Petition for a Declaratory Ruling.<sup>1</sup> On behalf of Locus Telecommunications, Inc., its counsel submits this letter in response to APCC's Motion to Dismiss.<sup>2</sup>

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<sup>1</sup> See Public Notice, *Pleading Cycle Established for Comments on the Petition of Locus Telecommunications, Inc. for a Declaratory Ruling or Rulemaking Regarding Customer Service Calls from Payphones, and a Motion to Dismiss Filed by APCC*, RM-11354, DA 07-513 (Rel. Feb. 1, 2007).

<sup>2</sup> As explained herein, APCC's Motion to Dismiss is a unique use, and we believe an improper abuse, of Commission processes. The Commission's decision to place APCC's Motion on Public Notice in conjunction with Locus' Petition for Declaratory Ruling gives rise to a procedural dilemma for the Petitioner. Although Locus intends to respond to the substantive arguments set forth in APCC's Motion in its Reply Comments, due March 20, 2007, it is nonetheless compelled to make the instant filing to: (1) express its concerns regarding the procedural infirmity in APCC's Motion and (2) preserve any and all rights it may have resulting from the Commission's decision to entertain APCC's Motion in the first instance. The Commission may treat this letter as it deems appropriate under its procedural rules, i.e., as Comments or an Opposition or something else. Because of these unique circumstances, however, Locus simply designates this filing as a "Letter."

APCC's filing of a Motion to Dismiss in the context of a request for Declaratory Ruling is an unprecedented and, as far as we can tell, impermissible abuse of the Commission's processes, to say nothing of the disrespect it evinces to Locus and its counsel. Pursuant to Section 1.2 of Commission's rules, "the Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty." 47 C.F.R. §1.2. On November 30, 2006, Locus petitioned the Commission in an effort to resolve a controversy, as between Locus and APCC, and remove uncertainty regarding the application of the Pay Telephone Compensation rules and associated precedent to the situation described in Locus' Petition. Locus filed its Petition following several months of negotiations with APCC, but was under no obligation to advise APCC of its filing. As a courtesy, Locus supplied APCC with a copy of its Petition. Thereafter, APCC proceeded to file a Motion to Dismiss on December 14, 2006.

Locus can find no procedural rule or precedent either permitting the filing of a Motion to Dismiss a Declaratory Ruling petition prior to the release of Public Notice. There is equally no support for filing a Motion to Dismiss *after* Public Notice. Indeed, a Motion to Dismiss is simply an improper and impermissible pleading in the context of a Declaratory Ruling proceeding. It appears APCC also had a difficult time locating support for its unprecedented, knee-jerk action, though this dearth apparently was not enough to stop it from making an argument out of whole cloth.

First and foremost, APCC's Motion is devoid of citations to Commission rules or precedent that permits a member of the general public to file *any* pleading regarding a "non-public" Petition for Declaratory Ruling, much less a Motion to Dismiss. The only reason APCC was even aware of Locus' Petition on or before December 14, 2006, and reason it could fabricate a justification for filing a Motion to Dismiss, resulted from Locus counsel's having shared a courtesy copy of the Petition with APCC's counsel. Such courtesies, however, do not give rise to standing nor do they create procedural opportunities where none would otherwise exist.

APCC avoids the procedural and standing issues entirely and jumps straight to efforts to justify the relief it requests. It does so citing two instances it claims support the Wireline Competition Bureau's ("Bureau") dismissal of Locus' Petition through exercise of its delegated authority. However, the cases cited by APCC are inapposite because neither involved a third-party request, much less a premature third-party request. Instead, dismissals in the cited cases resulted from "the Bureau's own motion."

The first example cited in Footnote 15 of APCC's Motion involves the Bureau's dismissal of a Petition for Declaratory Ruling filed by NYNEX on November 3, 1995. The Commission placed NYNEX's Petition on Public Notice. The following year, NYNEX filed a formal complaint based on the same facts described in its Petition. After internal deliberations, and not on any motion by third-party, the Bureau concluded the issues in the two proceedings were substantially the same and, exercising its delegated authority and discretion decided to dismiss the Petition. The second example cited by APCC involved a similar situation. The Bureau dismissed, as moot, Petitions for Declaratory Ruling filed by Sprint, Ameritech and US WEST, after the issues raised in their petitions were resolved in a separate formal complaint proceeding. Neither case nor any Commission rule gives rise to a procedural opportunity to file a Motion to Dismiss prior to the establishment of a pleading cycle, nor do they lend support to the relief requested by APCC.

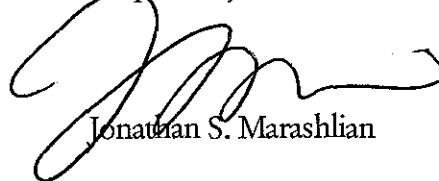
APCC may still seek the relief it desires, but it must be required to do so in adherence with Commission's procedures. Indeed, the appropriate time to express its opposition to Locus' Petition is today, through the filing of Comments in RM-11354; not through a premature Motion to Dismiss which serves no substantive public purpose. The only interests served by grant of its premature filing would have been APCC's, through concealment of the very existence of Locus' legitimate controversy regarding the application of Dial-Around Compensation charges to toll-free customer service calls.

One need not speculate long as to why APCC filed its inappropriate and unsupported Motion well before the general public was provided notice of same. What is perplexing, however, is that the Bureau entertained APCC's Motion. Indeed, the Bureau not only entertained it, but incorporated it into a Public Notice regarding Locus' Petition for Declaratory Ruling or, in the alternative, Rulemaking. The Bureau lacks the legal authority, delegated or otherwise, to grant a premature Motion to Dismiss. There can be no legitimate reason, therefore, to subject such a Motion to Dismiss to public notice and comment, much less incorporate the Motion into the Public Notice that announced the very existence of Locus' Petition to the public, as the Bureau proceeded to do.

Locus hereby requests the Bureau immediately dismiss APCC's Motion to Dismiss and remove it from the public record of RM-11354. Anything short of doing so may prejudice the ongoing proceeding by dissuading the public from participating. While Locus reserves all rights in this regard, it does not wish to impede the Commission from ruling on the merits of its Petition. Therefore, Locus respectfully requests the Commission address and resolve the procedural concerns identified in this letter either through Public Notice in RM-11354 or, ultimately, in its Declaratory Order. Locus believes this is necessary to prevent APCC and others from attempting to abuse Commission processes in the future. At a minimum, Locus implores the Commission not to grant APCC's Motion to Dismiss.

Thank you for your attention with respect to this matter.

Respectfully submitted,



Jonathan S. Marashlian